

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLEVELAND THERMAL, LLC,

Defendant.

Civil Action No. 1:15-cv-2198

**UNITED STATES' NOTICE OF LODGING OF
PROPOSED CONSENT DECREE
PENDING SOLICITATION OF PUBLIC COMMENTS
BY U.S. DEPARTMENT OF JUSTICE**

The United States of America (the "United States"), by and through its undersigned attorneys, hereby lodges the attached, proposed Consent Decree with this Court. **For the reasons set forth below, the Court should not sign or enter the proposed Consent Decree at this time.**

1. By even date herewith, the United States filed a Complaint in this action seeking civil penalties and injunctive relief from Defendant Cleveland Thermal, LLC ("Cleveland Thermal"), pursuant to Sections 113(b) and 167 of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413(b) and 7477. The Complaint asserts that Defendants violated the CAA at a steam generating facility located at 2274 Canal Road, Cleveland, Ohio (the "Facility").

2. The proposed Consent Decree, attached hereto, between the United States and Cleveland Thermal would resolve the allegations in the Complaint and conclude this case (although the Court would retain jurisdiction to enforce the Decree). Among other items of

injunctive relief, the proposed Consent Decree requires Cleveland Thermal to shut down three coal-fired boilers at the Facility as well as three fuel-oil fired boilers at a facility that Cleveland Thermal owns and operates on Hamilton Avenue in Cleveland. Cleveland Thermal will replace this lost capacity with new natural gas-fired boilers, including one that must be operational by November 30, 2015. Cleveland Thermal also has the option to install and operate a new natural gas-fired cogeneration facility. The proposed Consent Decree requires Cleveland Thermal to pay a civil penalty of \$75,000 and undertake a project costing no less than \$350,000 to mitigate the harm of alleged prior excess emissions from the coal-fired boiler.

3. At this time, the proposed Consent Decree should not be signed or entered by this Court. Instead, pursuant to U.S. Department of Justice regulations codified at 28 C.F.R. § 50.7, the United States will publish notice of the lodging of the proposed Consent Decree in the Federal Register. This notice will commence a thirty-day public comment period.

4. At the conclusion of the public comment period, the United States will make an appropriate filing with the Court, including providing the Court with any written comments received during the public comment period. Because the United States may withdraw its consent to the proposed Consent Decree if public comments disclose facts or considerations which indicate that the proposed Consent Decree is improper, inappropriate, inadequate, or not in the public interest, the United States will either: (i) move this Court to enter the Decree and explain why we believe the public comments do not provide a basis for withdrawing our consent

to the proposed Consent Decree; or (ii) notify the Court of our withdrawal of the proposed Consent Decree.

5. Accordingly, the Consent Decree should not be signed and entered at this time.

Respectfully Submitted,

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

ANNETTE M. LANG
Senior Counsel
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20530
(202) 514-4213
(202) 616-6584 (fax)
annette.lang@usdoj.gov

STEVEN M. DETTELBACH
United States Attorney
Northern District of Ohio

By: s/ Steven J. Paffilas
STEVEN J. PAFFILAS
Assistant U.S. Attorney
Reg. No. 0037376
United States Courthouse
801 W. Superior Ave.
Suite 400
Cleveland, OH 44113
(216) 622-3698
(216) 522-4982 (fax)
steven.paffilas@usdoj.gov

OF COUNSEL:

Mary T. McAuliffe
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard (C-14J)
Chicago, IL 60604

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October 2015, I caused a true copy of the foregoing United States' Notice of Lodging of Proposed Consent Decree Pending Solicitation of Public Comments by US Department of Justice, together with the accompanying Consent Decree, to be served electronically (by means of an electronic email from me and not by means of this Court's electronic filing system) and by first-class mail, postage pre-paid, on the following attorney for Defendant Cleveland Thermal, LLC:

Terrence S. Finn
Roetzel & Address
222 S. Main St.
Akron, OH 44308
tfinn@ralaw.com

s/ Steven J. Paffilas
STEVEN J. PAFFILAS
Assistant U.S. Attorney